

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

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| In Re: Timothy J. Leitner | Case Number 19-10454-BAH Chapter 7 |
|------------------------------|---------------------------------------|

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER S/I/I PACIFIC UNION FINANCIAL,
LLC
AND/OR ITS SUCCESSORS AND ASSIGNS

Movant.

v.

TIMOTHY J. LEITNER,

Debtor.

MOTION OF NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER S/I/I PACIFIC UNION
FINANCIAL, LLC FOR RELIEF FROM THE AUTOMATIC STAY AND FOR LEAVE TO
FORECLOSE MORTGAGE

*The Debtor's Statement of Intention indicates that the Property which is the subject of this motion is
to be surrendered.*

Nationstar Mortgage LLC d/b/a Mr. Cooper s/i/i Pacific Union Financial, LLC (hereinafter referred to as the "Movant"), a secured creditor, hereby moves this Court for Relief from the Automatic Stay pursuant to Bankruptcy Rules 4001 and 9014 and 11 U.S.C. Section 362(d) and for leave to foreclose a certain mortgage encumbering the property owned by the Debtor, known as 92 Maynard Avenue, Manchester, NH 03103. In support of this Motion, Movant states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the "Bankruptcy Code"). This proceeding is a "core" proceeding as this term is defined in the Code.
2. On April 2, 2019, Timothy J. Leitner (hereinafter referred to as the "Debtor") filed a voluntary Chapter 7 Petition in Bankruptcy.
3. Movant is the current holder of a certain mortgage given by the Debtor and by Emily K. Leitner (hereinafter referred to as the Co-Debtor) to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Reliant Mortgage Company, LLC in the original principal amount of \$213,855.00 dated November 21, 2013, and recorded or filed in Hillsborough County

Registry of Deeds in Book 8623, Page 416, as affected by a Loan Modification Agreement recorded at said Registry of Deeds in Book 8931, Page 1696 (the "Mortgage"). A copy of the Mortgage is attached hereto as Exhibit A.

4. The Mortgage secures a promissory note of even date and original principal amount given by the Debtor to Reliant Mortgage Company, LLC (the "Note") of which Movant is the current holder. A copy of the Note is attached hereto as Exhibit B.
5. Mortgage Electronic Registration Systems, Inc., solely as nominee for Reliant Mortgage Company, LLC assigned the Mortgage to Pacific Union Financial, LLC by assignment dated February 2, 2016 and recorded at Hillsborough County Registry of Deeds in Book 8827, Page 2352 a copy which is attached here to as Exhibit C.
6. The Mortgage encumbers real property known as *92 Maynard Avenue, Manchester, NH 03103* (hereinafter referred to as the "Property"). Copies of the Mortgage and Note are attached hereto as Exhibits "A" and "B" respectively. The Mortgage is in first lien position. Aside from the Property, there is no other collateral securing the Debtor's obligation to Movant.
7. The Debtor has defaulted on the Note and Mortgage by failing to make regular payments to Movant.
8. As of April 5, 2019, the balance due Movant on the Note was approximately \$171,678.45 (may not include negative escrow balances or recent escrow advances). The full amount of the Movant's claim together with allowable post-petition interest, reasonable attorney fees, court costs, and other recoverable expenses is secured by the Mortgage.
9. According to the Debtor's Schedules, the fair market value of the Property is \$245,000.00. Accepting the Debtor's valuation for purposes of this motion only, the liquidation value of the Property is \$231,331.25 based upon a usual and customary broker's commission of \$12,250.00 (5% of stated fair market value), deed stamps of \$918.75 (seller's one-half), and \$500.00 in miscellaneous estimated closing costs.
10. As of April 5, 2019, the Debtor's mortgage account is due for the July 1, 2018 contractual due date. The current monthly payment is \$1,484.38, subject to such subsequent adjustment as may be specified in the note.
11. As of April 5, 2019, Debtor owed Movant a total contractual arrearage of \$13,036.12 calculated as follows:
 - 6 monthly payments (07/01/18 - 12/01/18) at \$1,491.95/mo. \$8,951.70
 - 2 monthly payments (01/01/19 - 02/01/19) at \$1,484.38/mo. \$2,968.76
 - 2 monthly payments (03/01/19 - 04/01/19) at \$1,484.38/mo. \$2,968.76
 - Motion Fees and Costs \$931.00

- Less Suspense Balance \$(2,784.10)

Total Contractual Arrearage \$13,036.12

12. In addition to the Mortgage to Movant, there are outstanding liens on the Property as follows:

| <u>Lien</u> | <u>Type</u> | <u>Amount</u> | <u>Book/Page</u> |
|--|-----------------|---------------|------------------|
| Movant | Mortgage | \$171,678.45 | 8623/416 |
| Secretary of Housing and Urban Development | Junior Mortgage | \$62,601.59 | 8931/1703 |

The total of all liens on the Property is approximately \$234,280.04.

13. Movant is entitled to Relief from the Automatic Stay for cause pursuant to Section 362(d)(1) of the Code inasmuch as the Debtor has failed to make regular monthly mortgage payments to the Movant in violation of the terms of the Note and Mortgage.¹

WHEREFORE, Movant requests that this Honorable Court:

- (a) Grant Movant Relief from the Automatic Stay pursuant to 11 U.S.C. Section 362(d) and for leave to Foreclose Mortgage, allowing Movant, its successors or assigns to foreclose said mortgage (including, at its sole option, leave to accept a deed-in-lieu of foreclosure from the Debtor, their heirs, successors, assigns or transferees); and for it or a third party purchaser to prosecute summary process proceedings to evict any persons residing in the Property.
- (b) In the alternative, order Debtor to provide Movant with adequate protection of its claim; and
- (c) Grant such other Relief as this Honorable Court may deem just.

Date: April 26, 2019

Respectfully submitted,
 Nationstar Mortgage LLC d/b/a Mr. Cooper s/i/i
 Pacific Union Financial, LLC
 By its attorney,

¹ Attached are redacted copies of any documents that support this Motion, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

/s/ Tracy A. Kish

Tracy A. Kish, Esquire

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